IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 4854 of 2005

Between:

B. Parameshwaran S/o. Jogaiah, Hindu, Ex.Clerk-cum-Typist,
R/o. H.No. 9-11-9, Gowtham Nagar, Kovoor, West Godavari District.

..... PETITIONER

AND

The Principal Director of Audit, South Central Railway, Secunderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ, or order or direction more particularly one in the nature of writ of Mandamus and declare the order dt. 4-10-2004 passed in O.A.No. 616/2004 by the CAT Hyderabad bench Hyderabad along with the impugned order No. DDA/SCR/105/Vol IV dt. 30-9-2003 of respondent as arbitrary, illegal and violation of rules and against the principles of natural justice under Articles 14 and 21 of the Constitution of India and consequently further direct the respondent to sanction compassionate allowance in terms of Rule 41 of CCA (Pension) Rules 1972.

Counsel for the Petitioner: MR.T.RAMAKRISHNA RAO

Counsel for the Respondent: MR.A.RAJASHEKAR REDDY (ASSISTANT SG)

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed assailing the order passed by the Central Administrative Tribunal (for brevity Tribunal) in O.A.No.616 of 2004, dated 4.10.2004.

2. The petitioner was initially appointed in Class IV category and subsequently promoted as Clerk in the year 1994. While he was working as Junior Assistant, a trap was laid against him and investigation was taken up by the CBI under the provisions of Prevention of Corruption Act for demanding and accepting the bribe of Rs.1,000/-. Thereafter he was tried by the CBI Court, Visakhapatnam in CC.No.5 of 1993 and finally he was convicted and sentenced to pay a fine of Rs.1,000/- and also to suffer imprisonment for one year. Aggrieved by the said Judgment, the petitioner filed an appeal and this Court confirming the conviction and sentence awarded by the CBI Court dismissed the said appeal. Consequently the matter was considered with reference to Rule 19 (1) of Central Civil Service (Classification, Control and Appeal) Rules, 1965 and the disciplinary authority passed orders of removal consequent on the petitioner's conviction on 15.10.1997. Against the said removal, the petitioner filed an appeal and the appellate authority also dismissed the said appeal by an order dated 17.4.1998. Aggrieved by the said order of removal by the disciplinary authority, he filed O.A.No. 777 of 1998 and the Tribunal dismissed the same. However, it appears that he filed an application under Rule 41 of Central Civil Services (Pension) Rules for grant of compassionate allowance before the authorities, but the same was rejected. Against the said rejection, he filed OA.No. 288 of 2003. The learned Tribunal, however, set aside the said order and remanded the matter back to the authorities for fresh consideration. After the remand, the authorities passed another order dated 30.9.2003 rejecting the case of the petitioner. Aggrieved by the same, he filed the present OA and the Tribunal also dismissed the same. Against the said dismissal, the present Writ Petition has been filed.

3. The learned counsel for the petitioner makes an honest attempt to convince this Court that the order passed by the authorities rejecting the case of the petitioner for compassionate allowance is wholly illegal and arbitrary. He further submits that the

matter was not considered in a proper perspective. He also submits that the petitioner belongs to SC community having a family of six members and that the order of removal was also unwarranted on the facts and circumstances of the case. These three aspects ought to have been taken into consideration by the authorities while rejecting the case of the petitioner for compassionate allowance. In support of his contentions he relied on the Judgment of the Supreme Court reported in DIVISIONAL PERSONNEL OFFEICER vs. T.R.CHELLAPPAN[1] and submits that the Apex Court had interpreted the matter with reference to 'where any penalty to be imposed'. The Supreme Court observed that the matter has to be objectively determined taking into consideration the material available on record. He submits that in the instant case such principle as settled by the Supreme Court has not been followed, the order is liable to be set aside.

4. On the other hand the learned Standing Counsel for the Central Government submits that the order is quite legal and valid and since the Tribunal has considered the matter with reference to the rejection order and confirmed the order of the authority, it needs no interference.

5. We have heard the learned counsel for the parties at length.

6. The matter falls in a very narrow compass. The petitioner was removed from service consequent on his conviction by the CBI Court and the Tribunal affirmed the said removal and that order became final. But, however, an employee is entitled for compassionate allowance in deserving cases under Rule 41 of the CCS (Pension) Rules and in that regard the authority has to consider the matter and pass appropriate orders. In this case the authority considered the matter and passed orders on 30.9.2003 by observing as follows:

> "I observe that compassionate allowance under Rule 41 of Central Civil Services (Pension) Rules can be sanctioned only in those cases, which deserve special consideration. Sri B.Parameswaran who has grossly violated the conduct rules abusing his official position as public servant and obtained pecuniary advantage by cheating has undergone imprisonment on proved charges. Sri B.Parameswaran has also not applied for grant of compassionate allowance soon after his removal from service with effect from 15.10.1997 or immediately after dismissal of O.A.777/1998 on 20.4.1999, which shows that there are no exceptional circumstances, which call for the grant of compassionate allowance".

7. The learned counsel for the petitioner would submit that the reasoning given by the authority is wholly inappropriate and not in conformity with the principles settled by the Supreme Court on this aspect. He has further contended that the order of removal itself is unwarranted and arbitrary.

8. We are unable to accept the contention of the learned counsel for the petitioner attacking the order of removal as it has become final and the matter was not carried before this Court challenging the order of the Tribunal in OA.No.777 of 1998. Therefore, the only issue that arises for consideration is whether the matter was properly considered under Rule 41 of the CCS (Pension) Rules.

9. It is not in dispute that the petitioner was convicted by the CBI Court for the offence of demanding and accepting illegal gratification and the said Judgment of the CBI Court has become final. In such a situation whether the case can be considered and a lenient view can be taken is the question.

10. The Tribunal had clearly found that the charges proved were grave in nature falling under the provisions of the Prevention of Corruption Act and that the petitioner also immediately did not approach the authority for grant of compassionate allowance and on both these grounds the authority came to the conclusion that he is not entitled for compassionate allowance. After having been given our serious consideration, we do not find any flaw in the order passed by the authority and as confirmed by the Tribunal.

11. Reliance was placed by the learned counsel for the petitioner on the Judgment reported in EX.CT.DAYA NAND vs. UNION OF INDIA AND OTHERS[1], wherein while considering Rule 41 it was observed as follows:

> "Confining to relief ©, now pressed in this writ petition, it is submitted by Mr.Sharma that Rule 41 of the C.C.S. (Pension) Rules, 1972 (hereinafter referred to as 'the said Rules'_ entitles the petitioner to claim compassionate allowance when he has not been given the pension. Rule 41 of the said Rules, which deals with compassionate allowance, reads as follows:

"41: *Compassionate Allowance*:-

1. A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity;

Provided that the authority competent to dismiss or remove him from

service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on (Compensation Pension).

2. A compassionate allowance sanctioned under the provisions of sub-Rule (1) shall not be less than the (amount of Rupees sixty per mensem)". Hon'ble Court is declining to grant the service pension to the petitioner in that situation the petitioner most respectfully prays for issuance direction to the respondents to grant the compassionate allowance to the petitioner under Rule 41 of the CCS (Pension) Rules, 1972 from the date of discharge of the petitioner from service along with the arrears of back period amount".

The respondent, in the counter-affidavit has stated that the representation for compassionate allowance under Rule 41 of the said Rules was not considered by the competent authority due to devoid of merits. The petitioner is admittedly not granted the pension. It is difficult to accept the contention of the respondent in the counter-affidavit as to how the request for grant of compassionate allowance under Rule 41 would be devoid of merits.

As pointed out above, Rule 41 of said Rules specifically requires the authority competent to dismiss or remove from service to consider if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two thirds of pension or gratuity or both which would have been admissible to him if he had retired on (Compensation Pension).

The petitioner has admittedly served for more than 20 years, as pointed out above. His service came to be terminated without any grant of pension or gratuity. Under the circumstances, the petitioner deserves to be granted compassionate allowance under Rule 41 of the said Rules.

In the above view of the matter, the petition is granted. The respondent is directed to grant the compassionate allowance to the petitioner under Rule 41 of CCS (Pension) Rules, 1972 from the date of the discharge of the petitioner from service i.e. w.e.f. 21.5.1981 along with arrears. The respondents shall clear the dues of the petitioner within three months from today, failing which the petitioner will be entitled to 12% interest from the date the amount became payable till the actual date of payment by the respondent to the petitioner".

12. Since the issue in the above case arose on technical side, the compassionate

allowance was allowed to the petitioner in that case. But in the instant case the authorities and also the Tribunal had clearly observed that the writ petitioner herein was involved in a grave charge, which ended in conviction, which had been confirmed by a competent criminal appellate Court as well. Viewed from any angle, this is not a fit case where the discretion to be exercised in favour of the writ petitioner. The Tribunal in fact while appreciating the facts had observed as hereunder:

> "Having considered all the facts of the case and the rival contentions of the learned counsel for the applicant and the respondents, it is clear from the facts that the applicant was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.500/- and in default, one month simple imprisonment. The criminal appeal filed against the order of Special Judge was dismissed by the High Court of Andhra Pradesh and in the intervening period, the applicant was placed under suspension by the respondent authorities. In terms of Rule 19(i) of CCA (CCA) Rules, 1965, which provided that notwithstanding anything contained in Rules 14 to 18 of the said Rules, where any penalty is imposed on a government servant on the ground of conduct and which lead to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit. Based on the above rule, the applicant was served with a charge memo dated 9.1.1997 by the disciplinary authority, which imposed the penalty of removal from service on the applicant and the appellate authority had also confirmed the penalty imposed by the disciplinary authority. All the further proceedings taken up by the applicant in filing the OA and W.P. were dismissed. The matter of compassionate allowance is clearly to be considered under Rule 41 Sub-Rule (1) of CCS (Pension) Rules, 1972 which provides that 'the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance.
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> On the petition filed by the applicant before this Tribunal, the competent authority was directed to dispose of the representation of the applicant in this regard under Rule 41(1) of the CCS (Pension) Rules, 1972, within a period of 2 months from thereafter. The competent authority after considering all the facts of the cases, had passed necessary orders that the applicant is not entitled for any compassionate allowance. The action of the respondents very well finds support from the decision of the High Court of A.P. in WP.27037/01 wherein on similar facts, appeal filed by the applicant, was dismissed and the order of this Tribunal was confirmed that the applicant was not entitled for the compassionate allowance in the circumstances of the case. Having gone through the decision referred

to by the learned counsel for the applicant, I do not find any support to the case of the applicant, in any way".

13. In the light of the convincing reasons, which had been recorded by the authority as well as the Tribunal, referred to supra, the Writ Petition is devoid of merit.

14. Accordingly the Writ Petition is dismissed. No costs.

(G.BIKSHAPATHY, J.)

15th March, 2005.

SSR (P.S.NARAYANA, J.)

To

1 The Principal Director of Audit, South Central Railway, Secunderabad.

2 The Registrar, Central Administrative Tribunal, Hyderabad Bench, Hyderabad.

3 2 CD copies

4 1 CC to MR.RAMAKRISHNA RAO

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